

Supreme Court, U. S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. **78-471**

VICTOR FALU NELSON,

Petitioner,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,
M. I., ET AL,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

RAFAEL V. PEREZ MARCHAND
DR. SANTOS P. AMADEO
JOSE ENRIQUE AMADEO
819 López Sicardó Avenue-
Dos Pinos, Río Piedras,
Puerto Rico (00923).
Tel. 751-6543

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No.

VICTOR FALU NELSON,

Petitioner,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,
M. L., ET AL,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

The petitioner, VICTOR FALU NELSON of San Juan, Puerto Rico, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit in case No. 77-1463 whose slip Opinion appears at Appendix A, *infra*, page 1a. The denial of rehearing by the United States Court of Appeals for the First Circuit, appears at Appendix B, *infra*, page 1b.

JURISDICTION

The decision of the United States Court of Appeals for the First Circuit was announced on June 6, 1978. A

Petition of Rehearing dated June 15, 1978 was filed on June 19, 1978. Rehearing was denied on June 29, 1978 as appears from Appendix B, *infra*, page 1b. A petition for stay of mandate was filed on July 6, 1978 as appears at Appendix C, *infra*, page 4c, and denied on July 17, 1978 as appears at Appendix D, *infra*, page 1d by said Court of Appeals.

The petition for certiorari is timely filed under 28 U.S.C. §2101, and the jurisdiction of this High Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. That the Supreme Court of Puerto Rico denied petitioner's civil rights by its denial of his motion for stay of the mandate to allow him time to proceed by certiorari before this Supreme Court under the provisions of its Rule 45(e)¹ and under the provisions of 28 U.S.C.A. 1258(3),²

¹RULE 45(e) of the RULES OF THE SUPREME COURT OF PUERTO RICO reads as follows:

"(e).-In any case in which a judgment or order of this Court may be reviewed by the Supreme Court of the United States by way of certiorari, the mandate to the trial court may be retained, at the requested of a party, for a reasonable period of time. If within such a term there shall be filed with the Office of the Clerk a certificate from the Clerk of the Supreme Court of the United States establishing the fact that the petition for certiorari, the record, and the brief have been filed before that Court, the mandate shall be retained until final disposition of the petition for certiorari. Upon presentation of a copy of the order of the Supreme Court of the United States denying the issuance of the writ, the mandate shall forthwith be sent to the trial court. In the motion for retention of the mandate, the moving party shall recite the questions to be raised in the petition for certiorari, making reference to the pertinent facts and circumstances of the case."

²28 U.S.C.A. 1258(3) reads as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the
(continued)

and consequently the Court of Appeals for the First Circuit likewise denied on June 29, 1978 this petitioner's right of review by certiorari upon confirmation of the Supreme Court of Puerto Rico in the premises.

CONSTITUTIONAL PROVISIONS AND STATUTES

The case was originally based on the following constitutional and federal statutory provisions, to wit:

1.-The Federal Declaration Judgments Act, 28 U.S.C.A. 2201.

2.-The Supremacy Clause of the Constitution of the United States (*Article VI, Section 2*).

3.-The Due Process Clause of Amendment V to the Constitution.

4.-The Due Process Clause of Amendment XIV to the Constitution.

5.-28 U.S.C.A. 1258(3).

6.-28 U.S.C.A. 1343(3).

7.-42 U.S.C.A. 1981.

8.-42 U.S.C.A. 1983.

STATEMENT OF THE CASE

This is a case originally filed in the United States District Court for the District of Puerto Rico (*Civil No. 77-1057*)

(footnote continued from preceding page)

validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

which was based on the aforementioned constitutional and federal statutory provisions which protect the civil and proprietary rights of the petitioner Víctor Falú Nelson.

In said suit petitioner claimed that because of the denial of his statutory right to bring his case before this United States Supreme Court by certiorari under 28 U.S.C.A. 1258(3) and said Court's Rule 45(e) the petitioner had been left with no other alternative, but to appear before the United States District Court for Puerto Rico for the protection of his civil and proprietary rights.

It is undisputed that on August 14, 1944 petitioner Víctor Falú Nelson became hereditary owner of twenty-five per cent (25%) or one fourth part (1/4) of 2.03 cuerdas by judicial Resolution of the District Court of San Juan, Puerto Rico in Civil Case No. R-2941 of said Court, which fact was acknowledged by the Supreme Court of Puerto Rico in *IGLESIA v. FALU*, 103 DPR 611.

On August 15, 1964 petitioner Falú Nelson and respondent The Pentecostal Church of God, Inc. M. I. entered into an executory conditional contract to divide, by segregation or sale, the estate which they would hold jointly after respondent had acquired title to three fourth parts (3/4) thereof then held in common with Heraclio Falú Rosa and Heraclio Falú Nelson.

Title to the aforesaid portion of three fourth parts (3/4) of the undivided estate was acquired by respondent The Pentecostal Church on September 5, 1964 by deed Number 25 executed before Notary Public Octavio Jiménez of San Juan, Puerto Rico.

Once the respondent Pentecostal Church had become joint owner with petitioner Víctor Falú Nelson in the said estate of 2.03 cuerdas, respondent claimed that petitioner's

share of 1584.16 sq. meters had been reduced by eminent domain *after* the Contract of August 15, 1964 was signed; and petitioner objected that the so-called Eminent Domain Proceedings had occurred on June 25, 1964, and therefore, that the Contract to divide the joint estate was based on the *remainder* thereof, as of said date June 25, 1964.

The United States District Court for the Judicial District for Puerto Rico refuses to take cognizance of the case, and the Court of Appeals for the First Circuit affirmed the District Court Judgment pursuant to *P. I. Enterprises, Inc. v. Cataldo*, 457 F.2d 1012, 1015 (1st Cir. 1972).

REASONS FOR GRANTING THE WRIT

1.

The decision cited in support of the judgment below is not applicable to petitioner's case because the *P. I. Enterprises, Inc. v. Cataldo* case differs fundamentally from petitioner's Complaint before the Federal District Court for Puerto Rico, and is in no way a bar to the exercise of jurisdiction in his action, inasmuch as the doctrine of collateral estoppel which precludes relitigation of issues actually adjudged in a prior suit does not apply to his complaint for a judicial declaration of his rights under the executory and conditional contract for the division of a joint estate between petitioner and respondent herein; petitioner claiming that he has been deprived without due process of more than one half (1/2) of his hereditament thru the false and misleading representations of the respondent Church.

Petitioner's case clearly submits the proposition that by means of a hoax the respondent has led the Court below to

approve without a hearing the deprivation of petitioner's civil rights and property despite the documentary evidence by him submitted to the contrary. *Nashville, Chatanooga and Saint Louis, Ry. v. Wallace*, 288 U.S. 249 (1933); *Fountain v. Filson*, 336 U.S. 681, 93 L.Ed. 971.

The Court of Appeals for the First Circuit failed to consider that the Federal District Court exceeded its judicial powers, when, despite petitioner's motion for a hearing rendered a premature summary judgment against plaintiff Víctor Falú Nelson, herein petitioner, on the erroneous assumption that it has the power to do so under its judicial discretion. *Delno v. Market Street Railway Co.*, (C.C.A. 9th 1942), 124 F.2d 965, 968; *BORCHARD*: "Declaratory Judgments", Second Edition, 294; *VAN-NEMAN AND KUTNER*: "Declaratory Judgments in the Federal Courts" (1948).

Likewise, both Courts ignored the fact that under paragraph Four Section F of his contract with the respondent Church, the petitioner Víctor Falú Nelson segregated his hereditary share of 1584.16 sq. m. in the joint estate, and said segregation was final under *Quevedo Segarra v. Board of Appeals*, 102 DPR 87 (1974). That as such his segregation had been acknowledged by the Supreme Court of Puerto Rico by its Resolution of March 14, 1977 in Certiorari No. 077-23.

Petitioner respectfully submits that the Federal District Court for Puerto Rico is not at liberty to engage in a credibility evaluation of facts for the purpose of a summary judgment of dismissal. *Johnson Farm Equipment Co. v. Ccok*, 230 F.2d 119 (1956).

A summary judgment should not be used as a substitute for a trial on facts and law, especially where the parties are

entitled to a trial by jury, and the mere fact that the trial Judge believes that plaintiff cannot win the lawsuit before a jury, does not endow him with authority to take the place of a jury and decide contested issues of fact. *Cox v. English American Underwriters*, 245 F.2d 330 (1957).

Finally, petitioner submits that both the United States District Court for Puerto Rico and the Court of Appeals for the First Circuit have failed to consider that he petitioned the Federal District Court for Puerto Rico for a declaration of his rights under the Contract of August 15, 1964 with the respondent Church under Section 12 of the Uniform Declaratory Judgment Act which makes cognizance of his controversy with the respondent Church mandatory:

"This act is declared to be remedial; its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, statutes, and other legal relations, and is to be liberally construed and administered." (Emphasis supplied)

For the above stated reasons, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the First Circuit as a matter of justice.

RESPECTFULLY SUBMITTED, this 25th day of August, 1978.

RAFAEL V. PEREZ-MARCHAND
DR. SANTOS P. AMADEO
JOSE ENRIQUE AMADEO

By: /s/ Rafael V. Pérez-Marchand
Rafael V. Pérez-Marchand
Counsel for petitioner Víctor
Falú Nelson
819 López Sicardó Avenue-Dos
Pinos, Río Piedras, Puerto Rico-00923.
Tel. 751-6543.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date three printed copies of the foregoing Petition for a Writ of Certiorari have been served, by *certified mail*, on Félix A. Ramos Cabán, Counsel for respondent The Pentecostal Church of God, Inc. M.I., at his address: P.O. Box 275, Humacao, Puerto Rico (00601). And likewise certify that another three printed copies of said petition have been forwarded, by *certified mail*, to counsel for the respondent Judges of the Supreme Court of Puerto Rico, the Hon. Héctor A. Colón Cruz, Solicitor General of the Commonwealth of Puerto Rico, at his address: Department of Justice, P. O. Box 192, San Juan, Puerto Rico-00901.-

San Juan, Puerto Rico, this 25th day of August, 1978.

/s/ Rafael V. Pérez-Marchand
RAFAEL V. PEREZ-MARCHAND

APPENDIX A

United States Court of
Appeals for the First Circuit

No. 77-1463

(NOT FOR PUBLICATION)

VICTOR FALU NELSON,
Plaintiff-Appellant,
v.

THE PENTECOSTAL CHURCH OF GOD, INC.,
M. I., ET AL.,
Defendant-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
(Hon. Juan R. Torruella, U.S. District Judge)

Before COFFIN, Chief Judge,
CAMPBELL and BOWNES, Circuit Judges.

Rafael V. Pérez-Marchand, Santos P. Amadeo, and José Enrique Amadeo, on brief, for appellant.

Félix A. Ramos-Cabán, for appellee The Pentecostal Church of God, Inc., M. I. Solicitor General, on brief, for co-defendants, appellees, The Justices of the Supreme Court of Puerto Rico in support of motion for summary dismissal.

June 6, 1978

BOWNES, *Circuit Judge*. Appellant, dissatisfied with the outcome in which his contract dispute with appellee, The Pentecostal Church of God, Inc., M. I., was handled by the courts of the Commonwealth of Puerto Rico, sought relief in the federal district court. The district court dismissed his complaint on the ground that the state court judgment estopped action in the federal court. We affirm on an additional ground. Federal district and circuit courts lack jurisdiction to review decisions of the Supreme Court of Puerto Rico. Review of these decisions may only be sought in the Supreme Court of the United States. 28 U.S.C. §1258.

The judgment of the district court is affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

NO. 77-1463

VICTOR FALU NELSON,
Plaintiff, Appellant,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,
M. I., ET AL
Defendants, Appellees.

ORDER

Entered June 29, 1978

The petition for rehearing is denied. By denying the motions for retention of the mandate and for reconsideration thereof, the Supreme Court of Puerto Rico was not "blocking" appellant's alleged right to review in the United States Supreme Court. Stay of the mandate is not a prerequisite to obtaining review by the United States Supreme Court. See U.S. Sup. Ct. Rules 21 & 22; 28 U.S.C. §2101.

Furthermore, appellant does not appear to understand fully the bases of our decision affirming the judgment of the district court. We affirmed not only because the district court lacked jurisdiction to review the decision of the

Supreme Court of Puerto Rico, but also because "the state court judgment estopped action in the federal court". In other words, further review of the contract issues was barred by the doctrine of collateral estoppel. *P. I. Enterprises, Inc. v. Cataldo*, 457 F.2d 1012, 1015 (1st Cir. 1972).

By the Court:

(signed) DANA H. GALUP
Clerk.

cc: Messrs. Pérez-Marchand, Ramos Cabán and Colón Cruz)

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

NO. 77-1463

VICTOR FALU NELSON,

Plaintiff-Appellant,

vs.

THE PENTECOSTAL CHURCH OF GOD, INC.,
M. I., ET AL.,

Defendant-Appellees.

- MOTION FOR STAY OF MANDATE UNDER THE PROVISIONS OF RULE 41 OF APPELLATE PROCEDURE.-

TO THE HONORABLE COURT:

COMES NOW appellant Víctor Falú Nelson, and thru his undersigned Counsel, respectfully shows:

1.-That being dissatisfied with both Judgment rendered on June 6, 1978, and Order dated June 29, 1978 denying his Petition for Rehearing, on this same date has moved to file Certiorari under Rule 10 of the Rules of the Supreme Court of the United States, under 28 U.S.C.A. 1258.

2.-That Rule 36 of the Rules of Appellate Procedure, states as follows:

"ENTRY OF JUDGMENT

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of

the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. *If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court.* The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment. (Emphasis supplied).

3.-That the Opinion rendered by Hon. *Bownes*, Circuit Judge in the above-captioned case, affirming the Judgment of the District Court states: "*Review of these decisions may only be sought in the Supreme Court of the United States, 28 U.S.C. §1258.*"

4.-And by its Order dated June 29, 1978 this Honorable Court states: "*Stay of the mandate is not a prerequisite to obtaining review by the United States Supreme Court. See U.S. Sup. Ct. Rules 21 & 22; 28 U.S.C. §201.*" (emphasis supplied)

5.-That Rule 41 of the Rules of Appellate Procedure, states as follows:

(a) Date of Issuance.-The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to the costs shall constitute the mandate, unless the court directs that a formal mandate issue. *The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court; If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.* (emphasis supplied).

(b) Stay of Mandate Pending Application for Certiorari.

A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the court of appeals a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

6.-As the appellant's Notice of Appeal seeks reviews of the Judgment and Order rendered by this High Court under 28 U.S.C.A. 1258 thru the writ of Certiorari, and complying with Rules 21 and 22 of the Supreme Court, 28 U.S.C. 2101, he respectfully prays that this Honorable Court retain its mandate, or if already forwarded, order its delivery to the Clerk's Office, until notice of the Clerk of the Supreme Court of the United States if received by the Clerk of this High Court, within the period of thirty (30) days, in which herein appellant shall file the corresponding writ before said Court, after being previously aware of the docketing of his appeal.

RESPECTFULLY SUBMITTED, this 6th day of July, 1978.

RAFAEL V. PEREZ MARCHAND
DR. SANTOS P. AMADEO
JOSE ENRIQUE AMADEO

By: (signed) Rafael V. Pérez Marchand
Counsel for plaintiff appellant

Víctor Falú Nelson
819 López Sicardó-Dos Pinos,
Río Piedras, Puerto Rico-00923.
tel. 751-6543.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true copy of this Notice of Appeal, has been served, by *certified mail*, on Félix A. Ramos Cabán, Counsel for defendant appellee THE PENTECOSTAL CHURCH OF GOD, INC. M. I., at his address: P. O. Box 275, Humacao, Puerto Rico (00661). And likewise on counsel for the co-defendant Judges of the Supreme Court of Puerto Rico, the Hon. Héctor A. Colon Cruz, Solicitor General of the Commonwealth of Puerto Rico, at his address: Department of Justice, P. O. Box 192, San Juan, Puerto Rico (00901).

I also certify that true copy of this Motion For Stay of Mandate Under the Provisions of Rule 41 of Appellate Procedure, has been forwarded by mail to the Clerk for the United States Supreme Court, Washington, D. C. on this same date.

San Juan, Puerto Rico, this 6th day of July, 1978.

(signed) Rafael V. Perez Marchand
RAFAEL V. PEREZ MARCHAND
 Counsel for plaintiff appellant
 Víctor Falú Nelson
 tel. 751-6543

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

NO. 77-1463

VICTOR FALU NELSON,
 Plaintiff, Appellant,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.
M.I., ET AL,
 Defendants, Appellees.

ORDER OF COURT

Entered: July 17, 1978

Upon consideration of appellant's motion for stay of mandate and/or recall of mandate,

It is ordered that said motion be, and the same hereby is, denied.

By the Court:

DANA H. GALLUP, Clerk.

By: (signed) Francis P. Seigliano
 Chief Deputy Clerk.

APPENDIX E

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

NO. 77-1463.

VICTOR FALU NELSON,
Plaintiff, Appellant,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.
M. I., ET AL.,
Defendants, Appellees.

JUDGMENT

Entered: June 6, 1978

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

/S/ DANA H. GALLUP,
Clerk.

(cc: Messrs. Pérez-Marchand, Ramos-Cabán and Colón
Cruz)

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

NO.

78-471

VICTOR FALU NELSON,

Petitioner,

v.

THE PENTECOSTAL CHURCH OF GOD, INC.,
M.I., ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

**BRIEF FOR RESPONDENT
THE PENTECOSTAL CHURCH OF GOD, INC., M.I.
IN OPPOSITION**

FELIX A. RAMOS-CABAN
THE PENTECOSTAL CHURCH OF
GOD, INC., M.I.
P.O. BOX 275
HUMACAO, PUERTO RICO 00661
TEL. (809) 852-0270

Counsel for Respondent

(i)

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IN THE Supreme Court of the United States

OCTOBER TERM, 1978

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THE PENTECOSTAL CHURCH OF GOD, INC.,
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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

BRIEF FOR RESPONDENT THE PENTECOSTAL CHURCH OF GOD, INC., M.I. IN OPPOSITION

To the Honorable Court:

Comes the respondent THE PENTECOSTAL CHURCH OF GOD, INC., M.I., and pursuant to the provisions of Rule 24 of the Rules of this Hon. Court respectfully files this brief in opposition to the petition for a writ of Certiorari in this case.

QUESTIONS PRESENTED FOR REVIEW

This respondent submits that the only questions presented for review in this case are the following:

- I. WHETHER THIS HON. COURT HAS JURISDICTION TO REVIEW, BY WAY OF THIS PETITION FOR A WRIT OF CERTIORARI TO THE HON. COURT OF APPEALS FOR THE FIRST CIRCUIT UNDER 28 U.S.C. 1254 (1) THE FINAL JUDGMENT RENDERED BY THE HON. SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO IN THE CASE OF *IGLESIA v. FALU*, 103 D.P.R. 611 (1975) INTERPRETING A CONTRACT EXECUTED IN PUERTO RICO, UNDER LOCAL LAW AND BETWEEN PRIVATE CITIZENS OF THIS COMMONWEALTH.
- II. WHETHER THE HON. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO HAS JURISDICTION TO REVIEW BY MEANS OF A DECLARATORY JUDGEMENT SAID FINAL JUDGEMENT RENDERED BY THE HON. SUPREME COURT OF PUERTO RICO.

STATEMENT OF FACTS

The question before this Hon. Court arises out of a contract executed by petitioner VICTOR FALU NELSON, hereinafter referred to as FALU and the respondent THE PENTECOSTAL CHURCH OF GOD, INC., M.I. hereinafter referred to as THE CHURCH (Exhibit F, Vol.

II, Record on Appeal in the Court below, ps. 7 - 13). Said contract is for the division of a joint estate which is described there as follows:

"PARCEL of land in Sabana Llana Ward of Rio Piedras, San Juan, Puerto Rico, composed of two "cuerdas" with three cents of another (2.03) equivalent to seventy nine (79) centiareas and sixty nine (69) miliareas, bounding by the North and West with the Juan Mendez Creek; by the South with the Old Road to Carolina; and by the East with the property from which it was segregated. Comprises four (4) edifications, two (2) of concrete, single stories, dedicated to commerce, and the others to dwelling."

A "cuerda" is a unit of measure of land used in Puerto Rico which is equal to 3,930.3966 square meters.

Before, and for the purpose of entering into said contract the parties hired Mr. Thomas Viner Alcazar, a civil engineer and surveyor, to make as this did, a survey and ground plan of that joint estate and of the two lots into which said joint estate was to be divided among the parties (Exhibit A of Appendix to this Brief). This survey and ground plan, which was incorporated into the contract, revealed that the estate had an actual area of 8,125.87 square meters of which FALU was awarded a specific lot of 1,584.16 square meters and THE CHURCH was awarded a specific lot of 6,571.71 square meters. Each one of this two lots is fully described in the contract by their respective directions and distances with reference to said ground plan and also graphically illustrated on this. (Vol. II, Record on Appeal in the Court below, ps. 9 - 10, 10 - 11, and Exhibit A of Appendix to this Brief).

This contract was executed in the Spanish language, and Exhibit F, Vol. II of the Record on Appeal in the Court below, ps. 7 - 11, is a translation of the same, except that

FALU did not translate the corresponding portions of its paragraph FOURTH (A) and (C) in ps. 9 - 10 and 10 - 11, Vol. II, Record on Appeal in the Court below, in where each one of the said lots is described. *We will translate said descriptions because they are of the outmost importance to the clear understanding of this case by the Court.*

The lot awarded to FALU in subparagraph FOURTH (A); ps. 9-10, Vol. II, Record on Appeal in the Court below, is described as follows:

“PARCEL that results from the Plan of Measure of this property prepared by Engineer Tomas Viner Alcazar, license #3305 and which is composed of 1,584.16 square meters having the following boundaries: Starting from the De Diego Avenue, Old Road from Rio Piedras to Carolina, from a point designated with the letter “A” in the said Plan of Measure and which is a pipe with an advertisement, in a straight line, count 92.46 meters to the point situated next to an elbow at the margin of the Juan Mendez Creek, direction South to North; from that point following the margin of the Juan Mendez Creek until point 14 in another elbow of said Creek direction southwest. From said point 14 direction south by the margin of the Creek until point 15 at the margin of the same; from said point 15 direction southeast to point 16 and from point 16 direction to point 17; from said point direction south to point 18; and from said point 18 by all the margin of the Creek mentioned, direction South until the Road from Rio Piedras to Carolina, today De Diego Avenue, where exists a point adjacent to a Bucayo tree; and from this point measure 16 meters by the margin of the Road to the starting point next to the pipe that holds the advertisement of “Victor Electric Shop”.

The lot awarded to THE CHURCH in subparagraph FOURTH (C), (ps. 10-11 of Vol. II, Record on Appeal in the Court below) is described in the following manner:

“PARCEL described under letter “A”, in the Plan by Engineer Tomas Viner Alcazar referred to, of 6,571.71 square meters equivalent to 1.672 “cuerdas” and comprising the following points and boundaries: Starting from point A in said plan, that is, the pipe adjacent to the Old Road from Rio Piedras to Carolina, direction North in a boundary of 92.46 meters with the parcel B, that receives Mr. Victor Falu Nelson, until point 13 and from here by all the margin of the Juan Mendez Creek direction North until point 12; and from said point 12 by all the Creek passing points 10, 11 and 9 until point 8 at the margin of said Creek and from said point 8 changing direction to the South to point 7 which is an Oak tree and to point 6 which is a Bucayo tree until point 5; from point 5 direction West to point 4; and from point 4 direction West to point 3; and from here in direction South to point 2 at the margin of the road mentioned and from said point in direction to Rio Piedras, direction West until the starting point in a frontage of 23.94 meters, in boundary with the above mentioned road.”

In addition to awarding the FALU the lot of 1,584.16 square meters, the CHURCH paid him in cash the amount of \$5,000.00 “to indemnize” him “for the difference in the corresponding land to cover his undivided participation in the property whichever that difference may be in square meters of land”. (See paragraph FOURTH (B) of the contract, Vol. II, Record on Appeal in the Court below, p. 10).

It appears that before the date of the said contract between this parties the Municipal Government of San Juan was in the process of acquiring by eminent domain for the canalization of the Juan Mendez Creek two parcels of land from the

said tract of 2.03 "cuerdas". One of this parcels with an area of 881.97 square meters and the other with an area of 794.75 square meters (Exhibit B of Appendix to this Brief). There is no controversy as to this. The fact is that the first of this parcels; that of 881.97 square meters; affected the shape and area of the lot awarded in the contract to THE CHURCH diminishing said area from 6,571.71 square meters to 5,689.75 square meters and in the same way the other parcel; that of 794.75 square meters; affected the shape and area of the lot awarded to FALU in the contract, diminishing this from a rectangle of 1,584.16 square meters to a triangle of 789.42 square meters. (Exhibit C of Appendix to this Brief).

It was not until some date after December 1964 that FALU realized the fact of said expropriation and how it had affected the lot awarded to him in the contract. Thereafter he, unilaterally and without consulting THE CHURCH, hired Mr. Jaime Fuentes, a surveyor, to prepare as this did, a ground plan segregating a lot of 1,584.16 square meters from what was left after the expropriation, of the original tract of 2.03 "cuerdas" and leaving a remnant of 5,139.35 square meters. (Exhibit D of Appendix to this Brief). FALU then requested THE CHURCH to accept the division of the land as proposed in this ground plan prepared by Mr. Fuentes in substitution of that division contracted for in accordance with the ground plan prepared by Mr. Viner Alcazar (Exhibit A of Appendix to this Brief). THE CHURCH rejected said request. Although THE CHURCH accepted the loss of land (881.97 square meters) suffered by its parcel by virtue of the expropriation it did not accept the additional loss in the said new proposal made by FALU.

Since according to Puerto Rical law; Title 23, Laws of Puerto Rico Annotated, Section 25; the division or segregation of land that the parties had contracted was subject to

the approval by the Planning Board of Puerto Rico, paragraph FOURTH of the contract provided:

"(F). - The parties likewise agree that should the Planning Board not consent to said segregation, and should there be no other legal means to obtain said segregation, they will agree to have the property awarded to Don Victor Falu Nelson appraised. Each party will designate an expert appraiser and he, in turn, will consider the market value of said property and comparative sales in order to set the value of said parcel and Don Victor binds himself to sell to the other party for the amount set by the appraisers and the other party is bound to buy it at that price; it is also stipulated that, should said experts not agree as to the value of the property, both parties may agree to designate a third one and this third one's appraisal would be final for the sale of the property.

(G). - The referred appraisal, of course, will be made by taking into account the value of the construction and the establishment that stands on said parcel and, of course, provided that the parties cannot reach an agreement among themselves as to the value for the sale. The deed of sale shall be executed thirty (30) days after the final appraisal on the property." (Page 12, Vol. II, Record on Appeal in the Court below).

Since FALU had refused to file before the Planning Board of Puerto Rico the petition for the segregation of the land in the way contracted and in the form each parcel had been affected by the said expropriation, on July 26, 1967 THE CHURCH filed said petition, and after consideration on August 11, 1967 the Board denied approval of the segregation. (Exhibits K and K (1), Vol. II, Record on Appeal in the Court below, pages 23 - 27).

After the Board rejected the above mentioned petition for segregation filed by THE CHURCH, this requested FALU

to comply with paragraph FOURTH (F) and (G) of the contract providing for the appraisal and sale of what was left from the lot awarded to him in the contract. FALU refused to comply with this request and on the contrary insisted that THE CHURCH was bound to accept the division of the land proposed by him according to the ground Plan prepared by Mr. Jaime Fuentes (Exhibit D of Appendix to this Brief) to which THE CHURCH constantly objected.

Thereafter, on Jan. 10, 1968 THE CHURCH filed action against FALU in the Superior Court of Puerto Rico, San Juan Part, Civil Case Number 68-176, requesting the annulment of the contract or in the alternative the appointment of the appraisers pursuant to paragraph FOURTH (F) and (G) of the same. The Superior Court entered judgement in that case declaring the nullity of the contract. FALU then petitioned the Hon. Supreme Court of Puerto Rico to issue a writ of Revision for reviewing that judgement. The Hon. Supreme Court of Puerto Rico issued said writ, case number R 71-255, and on March 25, 1975 issued an Opinion and Judgement in that case; *Iglesia v. Falu*, supra (Exhibit M, Vol. II, Record on Appeal in the Court below, ps. 29 - 41), reversing the judgement entered by the Superior Court of Puerto Rico. In its opinion in the case the Hon. Supreme Court of Puerto Rico declared and determined the pertinent facts as follows:

"Before the contract was made Victor Falu knew that the Government of the Capital of Puerto Rico was expropriating part of the property for the channeling of Juan Mendez Creek. Up to the date of the contract the defendant and the plaintiff knew of the channeling of the creek even though they did not have the information of the exact area of the property where the channeling would be done.

The construction on the property began on December 1964, that is, four months after the agreement between Falu and the Church was made.

The channel did not follow the original course of the creek, instead it cut through the property dividing two portions of land of approximately 794 and 881 sq. meters respectively. These two portions of land and the land occupied by the channel were expropriated by the Government of San Juan of Puerto Rico. One of these portions of land was part of Falu's property and the other was part of the plaintiff's property. Before the expropriation Falu's property had the form of a strip of land or a long rectangle. After the expropriation, it had the form of an isosceles triangle with a base of 16 meters, sides of 92 meters and capacity of 789 sq. meters.

After the channeling was finished the defendant hires Eng. Jaime Fuentes to prepare a survey and segregation plan that was finished on April 1965.

Neither Falu nor Eng. Fuentes notified the Church about the preparation of the Plan and the Engineer drew a portion of land following Falu's instructions. Said property has a rectangular form, capacity of 1,584. sq. meters and it does not concur in its localization or configuration with the original plan prepared by Viner Alcazar. The rectangular form of that portion of land was obtained, in Fuentes plan, by taking more than 700 meters which in Viner's plan appeared adjudged to the Church." (Vol. II, Record on Appeal in the Court below, ps. 32 - 33). (Emphasis added).

In concluding its interpretation of the contract and the declaration of the rights of the parties under the same the Hon. Supreme Court of Puerto Rico upheld that:

"The agreed segregation was the one the Church submitted to the Board excluding the lands expropriated by the Government of the Capital. It is not

justifiable to order the parts to submit jointly the agreed segregation since probably the Board would reject it for the same motives that justified its previous rejection. We are, therefore, before the situation foreseen in the contract in the sense that if the Board did not approve the segregation, the parcel adjudged to Falu would be valuated as stated in the contract and he would sell it to the Church." (Emphasis added, Vol. II, Record on Appeal in the Court below, ps. 37 - 38).

Therefore the Hon. Supreme Court of Puerto Rico entered the following:

"JUDGMENT

For the reasons stated in the preceding Opinion, the appealed judgement is revoked and the parties are granted a term of thirty (30) days from the notification of this judgement to name their respective expert appraisers, pursuant to item (F) of the Fourth paragraph of the contract between the parties. Said experts shall assess Victor Falu's property, pursuant to paragraph FOUR (G) of the contract.

If the parties do not name the experts within the thirty days period, or should they not reach an agreement as to the value or as to the appointment of a third expert, the Superior Court, upon petition of any of the parties, will appoint the third expert and he will have the last word as to the value of the property. Once this is done, the deed of sale will be executed pursuant to the contract between the parties.

It is so ORDERED by the Court and CERTIFY the Secretary.

(San Juan, Puerto Rico, this 25th day of March, 1975)

(signed) Angel G. Hermida
ANGEL G. HERMIDA
Clerk."

(Vol. II, Record on Appeal in the Court below, ps. 40 - 41).

FALU did not file for a writ of Certiorari before this Hon. Supreme Court of the United States for reviewing that decision of the Hon. Supreme Court of Puerto Rico, therefore this became *res judicata*.

By April 1975, the case was back in the Superior Court of Puerto Rico for the continuation of the proceedings for appraisal and sale as ordered by the Hon. Supreme Court of Puerto Rico in the above mentioned case. After the appraisal had been concluded and still in the course of the proceedings, FALU unilaterally; without consulting the court nor THE CHURCH; and using the same ground plan prepared by Mr. Fuentes (Exhibit D of Appendix to this Brief) which had been rejected by the defendant, and by the Hons. Superior and Supreme Courts of Puerto Rico; applied to, and obtained from the Planning board of Puerto Rico the segregation of the lot of 1,584.16 square meters shown in said ground plan (Exhibits O and P, Vol. II, Record on Appeal in the Court below, ps. 45 - 49); this was the same division of the land proposed by FALU and rejected by the Hon. Supreme Court of Puerto Rico when acknowledged in its opinion that:

"Falu intended that the Church accept the segregation as it has been traced in the Fuentes Plan, but that segregation was different from the one agreed in the contract." (Emphasis added, Vol. II, Record on Appeal in the Court below, p. 37).

Based on the false representation that the Planning Board had authorized the division of the land in the way contemplated in the contract FALU moved the Superior Court of Puerto Rico to issue a stay of the appraisement proceedings. The Superior Court denied that motion (Exhibit Q, Vol. II, Record on Appeal in the Court below, ps. 49) and FALU filed for Certiorari in the Hon. Supreme Court of Puerto Rico; case number 0-77-73 (Exhibit R, Vol. II,

Record on Appeal in the Court below, ps. 58 - 122). Induced by said false representation, on March 14, 1977 the Hon. Supreme Court of Puerto Rico issued the following:

"RESOLUTION

San Juan, Puerto Rico, this 14th day of March, 1977.

Considering that the Planning Board approved, on October 7, 1976, the segregation of the parcel consisting of 1,584.16 square meters. This make viable the termination of the joint ownership agreed upon by the Church and Falu through the contract dated August 15, 1964, and the alternative in the contract which provides for Falu's sale of the parcel to the Church, and which was inserted only in case the segregation was not approved, could be made ineffective. Plaintiff has until April 5, 1977, to show cause why the writ should not be issued and parties be remitted to abide by the contract for the division of the joint ownership.

The proceedings before the Superior Court of Puerto Rico, San Juan Part in Civil Case No. 68-176 (901) are stayed while this petition is pending of decision.

IT IS SO ORDERED BY THE COURT and so Certified by the Clerk.

Associate Justice Rigau did not intervene.

(signed Ernesto L. Chiesa
ERNESTO L. CHIESA
Clerk."

(Exhibit S, Vol. II, Record on Appeal in the Court below, p. 123)

On March 27, 1977 THE CHURCH appeared before the Hon. Supreme Court of Puerto Rico (Exhibit V, Appendix to Plaintiff's Brief in the Court below, ps. 28 - 35) and showed that the premise upon which said resolution rested was false, that the segregation so approved by the Planning Board on Falu's petition was not the one agreed to by the parties in the contract but the same one that had been previously rejected

by THE CHURCH, by the Hon. Superior Court, and by that Hon. Supreme Court itself in its prior decision in this case. Thereafter, on April 14, 1977 the Hon. Supreme Court of Puerto Rico denied said petition for Certiorari with the following:

"RESOLUTION

San Juan, Puerto Rico, this 14th day of April, 1977.

Examined again the appeal in the light of the allegations made by the parties and of the Opinion issued by this Court on March 25, 1975 in case No. R-71-255, the requested remedy is denied.

IT IS SO ORDERED by the Court and Certified by the Clerk.

Chief Justice Trias Monge and Associate Justice Rigau did not intervene.

(signed) Ernesto L. Chiesa
Ernesto L. Chiesa
Clerk".

(Exhibit T, Vol. II, Record on Appeal in the Court below, p. 124)

Upon final disposition by the Hon. Supreme Court of Puerto Rico of the above said Petition for Certiorari in case 0-77-73, FALU moved that Hon. Court for the Retention of the Mandate praying for the term of ninety (90) days to file a Petition for Certiorari before this Hon. Supreme Court of the United States. On June 2, 1977 the Hon. Supreme Court of Puerto Rico issued a Resolution denying said motion (Exhibit U, Vol. II, Record on Appeal in the Court below, p. 125). FALU moved for the reconsideration of that denial, and on June 15, 1977 the Hon. Supreme Court of Puerto Rico denied said reconsideration (Exhibit V, Vol. II, Record on Appeal in the Court below, ps. 126 - 129).

Thereafter, on July 26, 1977 FALU filed action in the Hon. U.S. District Court for the District of Puerto Rico, case

number 77-1057, seeking declaratory judgement and injunction directed against THE CHURCH, the Hon. Judges of the Supreme Court of Puerto Rico and the Superior Court of Puerto Rico, San Juan Part, to abstain from execution of their judgements in this case. This declaratory action clearly constitutes a collateral attack to the judgement of the Hon. Supreme Court of Puerto Rico in *Iglesia v. FALU*, supra.

On August 15, 1977, the Hon. District Court issued an order dismissing that case pursuant to *Cournoyer v. Town of Lincoln*, 533 F2 21 (C.A. 1, 1976), *P. I. Enterprises, Inc. v. Cataldo*, 457 F2 1012, 1015 (C.A. 1, 1972); and *Arvelo v. Supreme Court of Puerto Rico*, 382 F. Supp. 510 (D.C.P.R.) 1974, and on August 17, 1977 the Clerk of that Hon. Court entered judgement accordingly. (Appendix to Brief for Plaintiff in the Court below, p. 26).

FALU appealed this dismissal before the Hon. U.S. Court of Appeals for the First Circuit. On June 6, 1978 the Court of Appeals affirmed the judgement of the District Court (Appendix A to Petition for Certiorari). Thereafter FALU filed his petition for Certiorari before this Hon. Supreme Court under 28 U.S.C. 1254 (1).

ARGUMENT

THE CHURCH understands that by his petition for Certiorari under 28 U.S.C. 1254 (1) FALU pretends this Hon. Court to review the final judgement rendered by the Hon. Supreme Court of Puerto Rico on March 25, 1975 in *Iglesia v. FALU*, 103 D.P.R. 611 (1975). We submit that this Hon. Court lacks jurisdiction under 28 U.S.C. 1254 (1) to review final judgements or decrees of the Hon. Supreme Court of Puerto Rico since that statute refers only to "cases

in the courts of appeals". If FALU wished to have said final judgement of the Hon. Supreme Court of Puerto Rico reviewed by this Hon. Court he had to invoke, *on time*, not now, the jurisdiction of this Hon. Court under 28 U.S.C. 1258 which is the only one authorizing this Hon. Court to review final judgements or decrees rendered by the Hon. Supreme Court of Puerto Rico.

The resolution entered on June 2, 1977 by the Hon. Supreme Court of Puerto Rico in Certiorari number 0-77-73 (Exhibit U, Vol. II, Record on Appeal in the Court below, p. 125) denying FALU's motion for stay of the mandate to allow him time to proceed by Certiorari before this Hon. Supreme Court did not constitute a deprivation of FALU's civil rights as he claims now. First, the motion for the retention of the mandate was addressed to the discretion of the Hon. Supreme Court of Puerto Rico. Rule 45 (e) of the Rules of the Supreme Court of Puerto Rico clearly states that "the mandate to the trial court may be retained"; second, FALU's motion for the retention of mandate did not comply with the last sentence of that Rule which expressly requires: "In the motion for retention of the mandate, the moving party shall recite the questions to be raised in the petition for Certiorari, making reference to the pertinent facts and circumstances of the case"; and last but not least, the resolution issued by the Hon. Supreme Court of Puerto Rico denying the writ of Certiorari in said case 0-77-73 did not constitute a final judgement or decree reviewable by Certiorari before this Hon. Court under 28 U.S.C. 1258 (3), but even if it could be considered such final judgement or decree, FALU did not petition then this Hon. Court for Certiorari under 28 U.S.C. 1258 (3) within the term of ninety (90) days granted by 28 U.S.C. 2101 (c). Furthermore, as correctly stated by the Court below in its order of

June 29, 1978 (Appendix B to Petition for Certiorari) denying FALU's petition for rehearing. "stay of mandate is not a prerequisite to obtaining review by the United States Supreme Court." As a matter of fact FALU has not been deprived of his right to invoke the jurisdiction of this Hon. Court under 28 U.S.C. 1254 (1) by the order entered by the Court below on July 17, 1978 denying his motion for stay of its mandate (Appendix E to this Brief).

It is not correct to assert, as FALU does, that the Hon. Court of Appeals for the First Circuit "denied him his right of review by Certiorari upon confirmation of the Supreme Court of Puerto Rico in the premises". The Hon. Court of Appeals did not affirm the judgement rendered by the Hon. Supreme Court of Puerto Rico. All the Hon. Court of Appeals decided is that the District Court nor the Court of Appeals have jurisdiction to review the final judgements rendered by the Hon. Supreme Court of Puerto Rico since the authority to do that was deposited by Congress in this Hon. Supreme Court; 28 U.S.C. 1258; and that FALU is estopped to relitigate in the federal courts the same issues litigated by him in and properly adjudged by the local courts including the Hon. Supreme Court of Puerto Rico. *"Where a state court having jurisdiction in a suit between the same parties, over the same subject matter, has defined and declared the rights of the parties, the Federal District Court is without power to redeclare, review or set aside such judgement or decree of the state court whether it be interlocutory or final because it is not a court of review for either state or federal cases."* (Emphasis added, McLain v. Lance, 146 F2 341, 345 (1944).

The contract executed by FALU and THE CHURCH is so clear and unambiguous that it is not susceptible of any logical construction, except its unmistakable mandate that

FALU is bound under its terms to sell to THE CHURCH the 789.42 square meters of land that are left from the lot awarded to him in the contract. It was so interpreted by the Hon. Supreme Court of Puerto Rico and that interpretation can not be relitigated in the federal courts.

"Where states decision involves only local construction of a local contract, under local law, no substantial federal question is presented. Moreover, even if the state's courts opinion be considered ambiguous, we should choose the interpretation which does not face us with a constitutional question". Black v. Cutter Laboratories, 351 U.S. 292, 299 (1956). (Emphasis added)

FALU has not challenged nor could he seriously challenge the jurisdiction of the Hon. Supreme Court of Puerto Rico to decide as it did the so called "federal issues" raised by him in this case. "It is settled beyond dispute that state courts have jurisdiction to decide federal issues except in areas where federal courts have been granted exclusive jurisdiction." *P.I. Enterprises Inc. v. Cataldo*, supra, 1014. He has not asserted, nor could he seriously assert that he did not have "a fair opportunity procedurally, substantively and evidentially to pursue his claim the first time". *Blonder Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 333 (1971). "Obviously, the federal cause of action is different in state court, but the doctrine of collateral estoppel precludes relitigation of issues actually litigated and determined in the prior suit regardless of whether (the judgement) was based on the same cause of action as the second suit". *P.I. Enterprises Inc. v. Cataldo*, supra, 1015. "The federal courts do not review state court civil proceedings under the guise of the Civil Rights Act." *Cournoyer v. Town of Lincoln*, supra. As declared by the

Hon. Court below in the *Cataldo* case, supra, 1015, and later repeated in *Cournoyer*, supra, 22: "A complaint under the Civil Rights Act does not provide the springboard for an unhappy state litigant to raise his federal claims de novo in federal court." "The Civil Rights Act was not designed to be used as a substitute for the right of appeal or to collaterally attack a final judgement of the highest court of a state and relitigate the issues which it decided." *Coogan v. Cincinnati Bar Assoc.*, 431 F2 1209, 1211 (1970), quoted with approval in *Cataldo*, supra, 1015.

The judgement entered by the Hon. Court below in this case is not in conflict with the decision entered in the *Cataldo* case, supra. FALU is estopped to relitigate his judicially declared contractual obligation to sell to THE CHURCH what is left of the lot awarded him in the same. FALU has not been deprived by THE CHURCH of any part of his hereditament, said deprivation was due to the exercise of the power of eminent domain by the Government of the Capital of Puerto Rico, which power and expropriation he has never challenged.

Section 41 of Title 23 of the Laws of Puerto Rico and the case of *Quevedo Segarra v. Board of Appeals*, 102 D.P.R. 87 (1974) cited by FALU, have nothing to do with the case at bar. Said statute only provided that the decisions issued by the Planning Board of Puerto Rico would be revised on appeal by the Board of Appeals. It did not, nor could it, confer jurisdiction upon the Board to review judgements rendered by Hon. Supreme Court of Puerto Rico. *Besides, said statute was repealed by Article 39 of Law Num. 76 of June 24, 1975 effective July 1, 1975.*

Before we conclude THE CHURCH respectfully submits that the petition filed in this case does not state any ground for granting the writ nor any special or important reasons to

move the discretion of this Hon. Court to issue the writ of Certiorari (Rule 19 of the Rules of the Supreme Court of the United States) and that said petition has been filed in bad faith merely to delay the execution of the judgement of the Court below and that of the Hon. Supreme Court of Puerto Rico.

CONCLUSION

Wherefore, THE CHURCH most respectfully prays this Hon. Supreme Court to deny the petition for Certiorari in this case and appearing that there is no ground for granting such a writ THE CHURCH further prays it be awarded a reasonable amount for damages and costs.

Respectfully submitted this 27th day of September, 1978.

/s/ Felix A. Ramos-Caban
 FELIX A. RAMOS-CABAN
 The Pentecostal Church of God,
 Inc., M.I.
 P.O. Box 275
 Humacao, Puerto Rico 00661
 Tel. (809) 852-0270
Counsel for Respondent

CERTIFICATE OF SERVICE

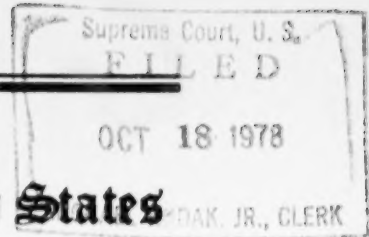
I HEREBY CERTIFY THAT on this date three printed copies of the foregoing Opposition to the Petition for a Writ of Certiorari have been served, by certified mail, on Mr. Rafael V. Pérez Marchand, Esq., Counsel for Petitioner Mr. Victor Falu Nelson, at his address: 819 Lopez Sicardo Ave., Dos Pinos, Rio Piedras, Puerto Rico (00923). And likewise certify that another three printed copies of said Opposition have been forwarded, by certified mail, to counsel for the respondent Judges of the Supreme Court of Puerto Rico, the Hon. Hector A. Colon Cruz, Solicitor General of the Commonwealth of Puerto Rico, at his address: Department of Justice, P.O. Box 192, San Juan, Puerto Rico 00901.

Humacao, Puerto Rico, this 27th day of September, 1978.

/s/ Felix A. Ramos-Caban
FELIX A. RAMOS-CABAN

IN THE
Supreme Court of the United States

OCTOBER TERM. 1978



NO. **78-471**

VICTOR FALU NELSON,

Petitioner,

v.

THE PENTECOSTAL CHURCH OF GOD, INC., M.I.,
ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

**BRIEF FOR RESPONDENT
THE PENTECOSTAL CHURCH OF GOD, INC., M.I.
IN OPPOSITION**

APPENDIX

FELIX A. RAMOS-CABAN
The Pentecostal Church of God,
Inc., M. I.
P.O. Box 275
Humacao, Puerto Rico 00661
Tel. (809) 852-0270

Counsel for Respondent

APPENDIX FOR RESPONDENT
THE PENTECOSTAL CHURCH OF GOD, INC., M. I.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

NO.

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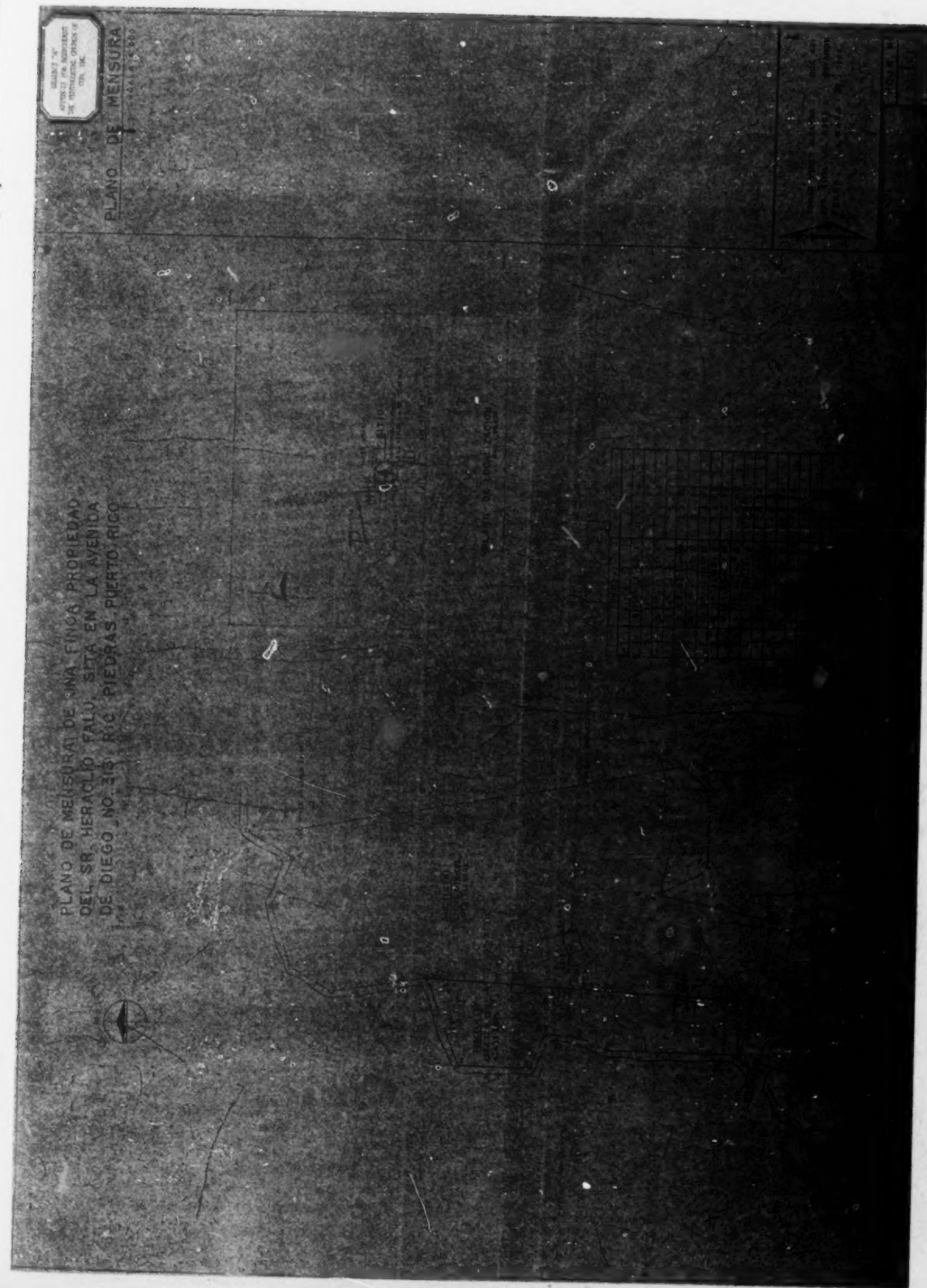
**BRIEF FOR RESPONDENT
THE PENTECOSTAL CHURCH OF GOD, INC., M.I.
IN OPPOSITION**

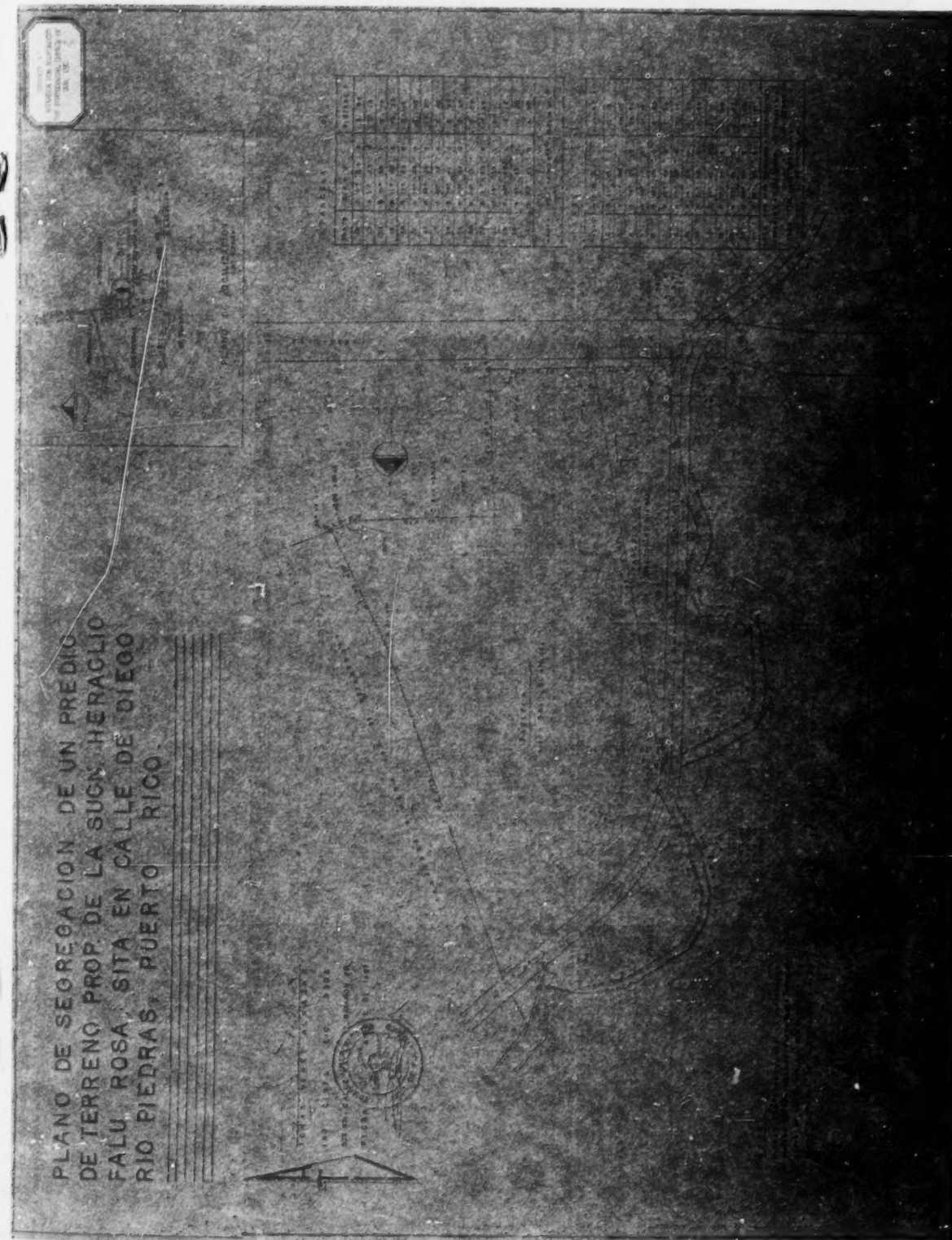
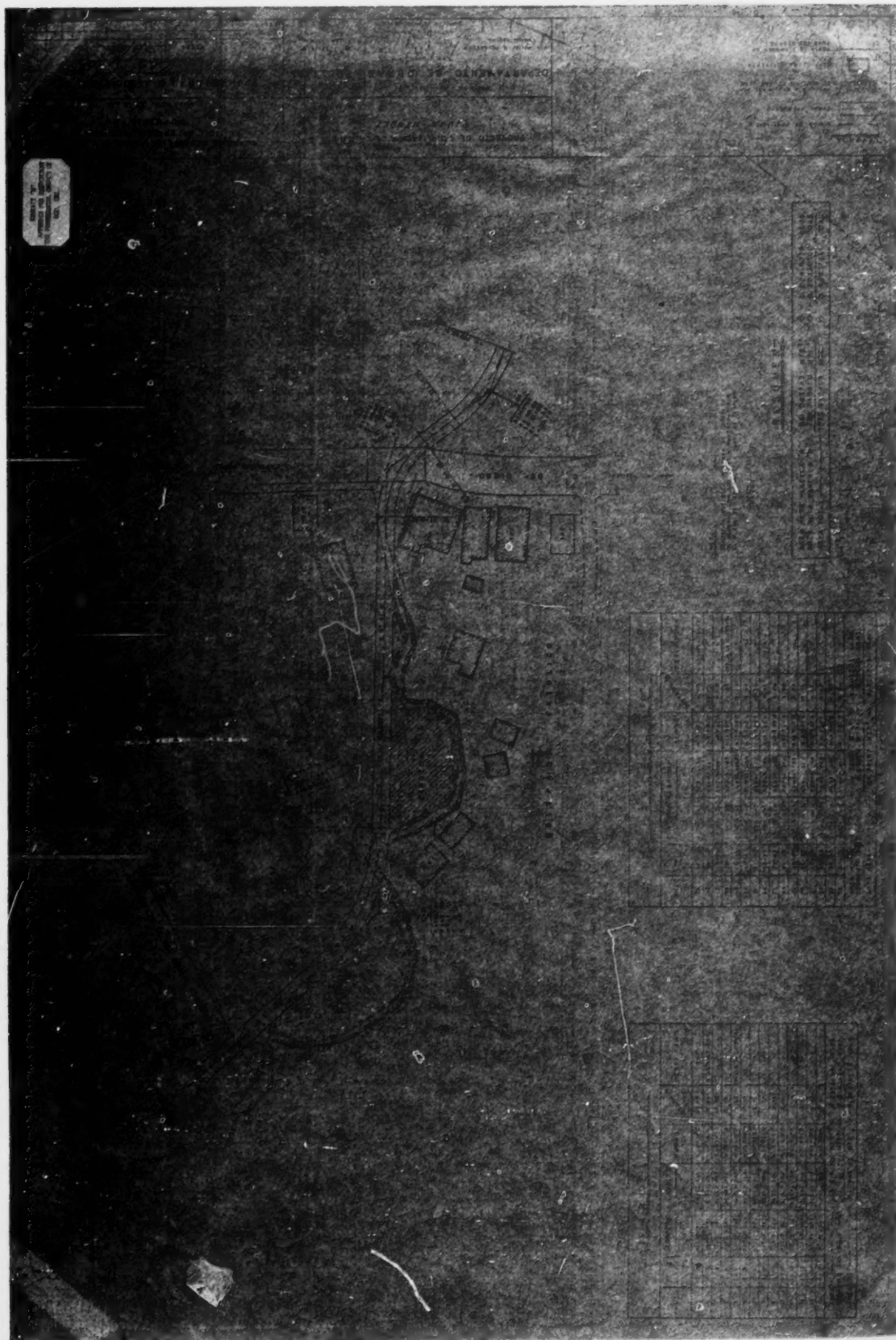
APPENDIX

REPRODUCTION
FOR THE
OFFICE OF THE
ATTORNEY GENERAL
OF THE
UNITED STATES

PLANO DE MENSURA

PLANO DE MENSURA DE UNA FINCA PROPIEDAD
DEL SR. HERACLIO TALU, SITA EN LA AVENIDA
DE DIEGO NO. 315 R/C PIEDRAS, PUERTO RICO





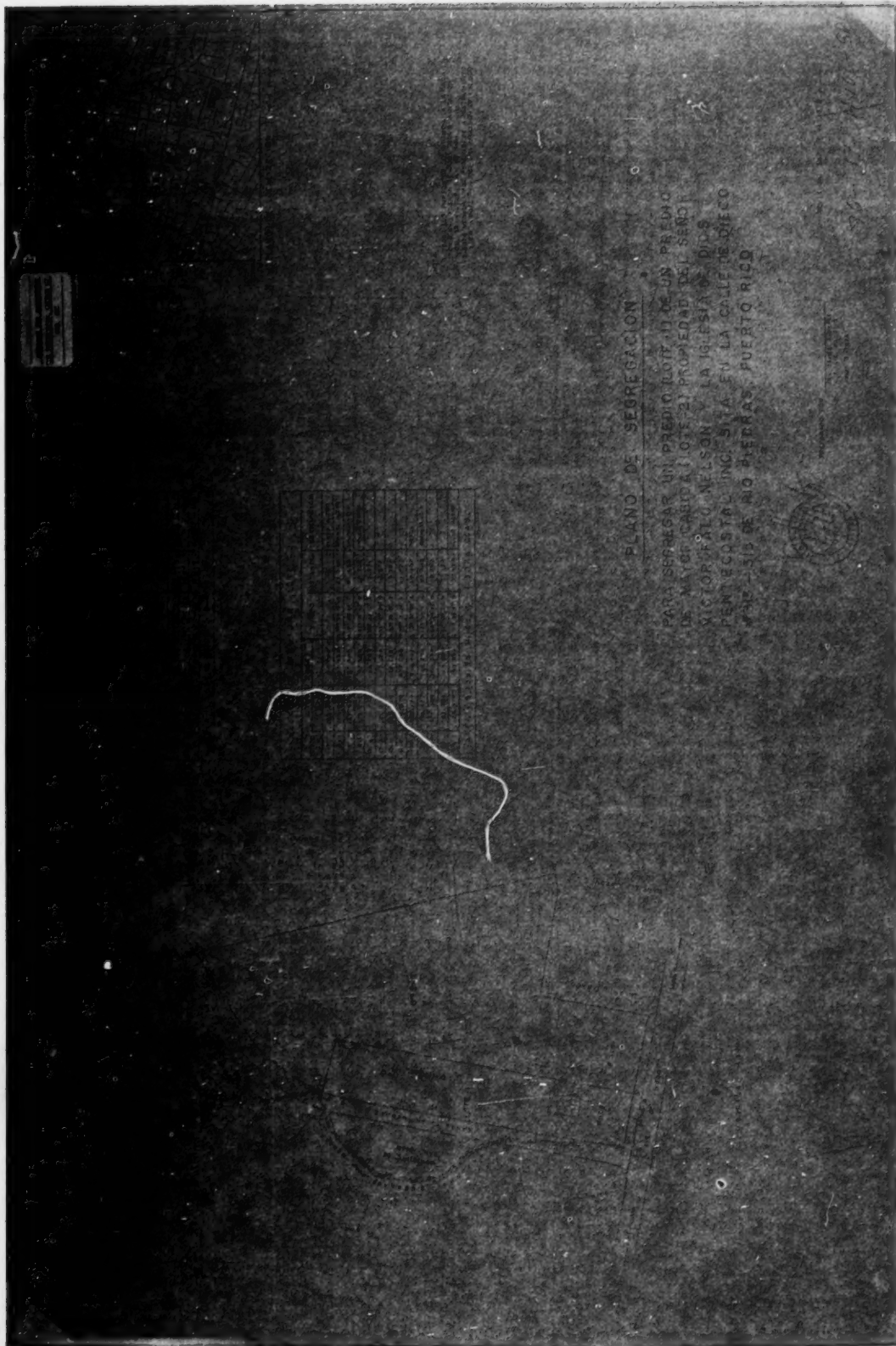


EXHIBIT "E"

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 77-1463.

VICTOR FALU NELSON,
Plaintiff, Appellant,

v.

THE PENTECOSTAL CHURCH OF GOD, INC., M.I.,
ET AL.,
Defendants, Appellees.

ORDER OF COURT

Entered: July 17, 1978

Upon consideration of appellant's motion for stay of mandate
and/or recall of mandate,

It is ordered that said motion be, and the same hereby is, denied.

By the Court:

DANA H. GALLUP, Clerk.

By: /s/ Francis P. Seigliano
Chief Deputy Clerk.

[cc: Messrs. Perez-Marchand, Ramos Caban, and Colon Cruz]